



MONTANA DEPARTMENT OF TRANSPORTATION INVITATION FOR BID (IFB) (THIS IS NOT AN ORDER)

IFB Number:
#HWY-309722-RP

IFB Title:
**GUARDRAIL SAFETY PROJECT MT-83 (SALMON LAKE), MISSOULA
DIVISION**

IFB Due Date and Time:
AUGUST 17, 2010
3:00 p.m., Local Time

Number of Pages: 17

ISSUING AGENCY INFORMATION

Procurement Officer:
RICHELE PARKHURST

Issue Date:
JULY 26, 2010

**MONTANA DEPARTMENT OF TRANSPORTATION
PURCHASING SERVICES SECTION
424 MOREY STREET
PO BOX 20437
BILLINGS MT 59104-0437**

Phone: (406) 657-0274
Fax: (406) 256-6487
TTY Users, (406) 444-7696

Website: <http://gsd.mt.gov/>

INSTRUCTIONS TO BIDDERS

**COMPLETE THE INFORMATION BELOW AND
RETURN THIS PAGE WITH YOUR SEALED BID
AND ANY REQUIRED DOCUMENTS TO:**

**#HWY-309722-RP
PURCHASING SERVICES SECTION
424 MOREY STREET
PO BOX 20437
BILLINGS MT 59104-0437**

Mark Face of Envelope/Package:

IFB Number: #HWY-309722-RP

SEALED BIDS will be received and publicly opened
in the Billings office at 3:00 pm.

Attachments: 1

BIDDERS MUST COMPLETE THE FOLLOWING

Federal Tax ID Number:

Completion Date:

Bidder Name/Address:

Authorized Bidder Signatory:

(Please print name and sign in ink)

Bidder Phone Number:

Bidder FAX Number:

Bidder E-mail Address:

IMPORTANT: SEE STANDARD TERMS AND CONDITIONS

BILL TO: DEPT OF TRANSPORTATION
PO BOX 7039
MISSOULA MT 59807-7039

PROJECT SITE: DEPT OF TRANSPORTATION
SALMON LAKE NORTH, MT-83
MILEPOST 5.491 TO 5.042
MILEPOST 5.770 TO 5.581
MILEPOST 7.695 TO 7.936

Questions may be directed to Jack May at (406) 523-5803 in Missoula. However, any changes to the requirements of the Invitation for Bid (IFB) can only be made by the Montana Department of Transportation (Department) in writing and claimed oral modifications are not valid or binding.

1.0. STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal or acceptance of a contract, the Contractor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

1.1. ACCEPTANCE/REJECTION OF BIDS OR PROPOSALS

The Department reserves the right to accept or reject any or all bids or proposals, wholly or in part and to make awards in any manner deemed in the best interest of the Department. Bids and proposals will be firm for 30 days, unless stated otherwise in the text of the invitation for bid or request for proposal.

1.2. ACCESS AND RETENTION OF RECORDS

The Contractor agrees to provide the Department, Legislative Auditor or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of 3 years after either the completion date of the contract or the conclusion of any claim, litigation or exception relating to the contract taken by the State of Montana or third party.

1.3. ALTERATION OF SOLICITATION DOCUMENT

In the event of inconsistencies or contradictions between language contained in the Department's solicitation document and a Contractor's response, the language contained in the Department's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the Contractor's disqualification and possible debarment.

1.4. ANTITRUST ASSIGNMENT CLAUSE

All vendors, Contractors and subcontractors hereby assign to the State of Montana any and all claims or causes of action for any antitrust law violations or damages arising therefrom as to goods, materials and services purchased under the terms of this agreement and any change order that may result from this agreement. This assignment is made on behalf of the vendor, Contractor and all subcontractors, which may be hired or contracted with to furnish goods, materials or services.

1.5. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the Department. (Mont. Code Ann. § 18-4-141)

1.6. AUTHORITY

The following bid, request for proposal, limited solicitation or contract is issued in accordance with Title 18, Montana Code Annotated and the Administrative Rules of Montana, Title 2, chapter 5.

1.7. BILLING

The State of Montana cannot pay for materials or services in advance. All billing against this purchase order must be made only after completion of receipt of merchandise or services rendered.

1.8. COLLUSION PROHIBITED

Prices quoted shall be established without collusion with other Contractors and without attempt to preclude the Department from obtaining the lowest possible competitive price.

1.9. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under the contract, fully comply with all applicable federal, state or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin by the persons performing the contract.

1.10. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities or specifications of the contract shall be granted without prior written consent of the Department's Purchasing Section. Supplies delivered which do not conform to the contract terms, conditions and specifications may be rejected and returned at the Contractor's expense.

1.11. DEBARMENT

The Contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State.

1.12. DISABILITY ACCOMMODATIONS

The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals, who need aids, alternative document formats or services for effective communications or other disability-related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

1.13. EXCEPTIONS

A prospective Contractor may take "exception" to bid terms, conditions, specifications and dates stated within the bid package. However, the Department reserves the right to disqualify any and all bids submitted which include exceptions, if deemed not in the Department's best interest.

1.14. FACSIMILE RESPONSES

Facsimile bids sent directly to the Department of Transportation will not be accepted; however, facsimile bids sent to a 3rd party and then delivered to the Department in a properly addressed, sealed envelope will be accepted.

1.15. FAILURE TO HONOR BID/PROPOSAL

If a bidder/Contractor to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the Department may, in its discretion, suspend the bidder/Contractor for a period of time from entering into any contracts with the State of Montana.

1.16. FORCE MAJEURE

Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

1.17. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to defend, protect, indemnify and save harmless the State of Montana and Department against and from all claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees) and losses to them from any cause whatever (including patent, trademark and copyright infringements) from the Agreement and its execution. This includes any suits, claims, actions, losses, costs or damages of any kind, including the State's and Department's legal expenses, arising out of, in connection with, or incidental to the Agreement, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, omissions or misconduct of Department's employees if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of Contractor's employees. The Contractor assumes all responsibility for ensuring and enforcing safe working conditions and compliance with all safety-related rules and regulations for the benefit of its own employees, the employees of any subcontractor and the public. That responsibility includes all duties relating to safety, regardless of whether any such duties are, or are alleged to be, "nondelegable" (e.g., the Montana Safe Place to Work Statute, etc.). This indemnification is expressly intended by the parties to include any claims, liabilities, demands, causes of action, judgments (including costs and reasonable attorneys fees) and losses that are, or are alleged or held to be, based upon a breach by the Department of a nondelegable duty relating to workplace safety for the Contractor's employees, the employees of any subcontractor and the public.

1.18. LATE BIDS AND PROPOSALS

Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the Contractor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the Contractor at the expense of the Contractor or destroyed if requested.

1.19. PAYMENT TERM

All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the Department is allowed 30 days to pay such invoices. All Contractors may be required to provide banking information at the time of contract execution in order to facilitate state electronic funds transfer payments.

1.20. PREPARATION OF BIDS

Bids must be written in ink and/or typewritten on bid forms furnished herewith. Erasures and alterations must be initialed by the Contractor in ink. Verbal bids will not be accepted. Facsimile bids sent directly to the Department will not be accepted; however, facsimile bids sent to a third party and then delivered to the Department in a properly addressed, sealed envelope will be accepted. Bid quotations shall be considered firm for 30 days after the date of opening unless otherwise stated in writing within the bid package.

1.21. RECIPROCAL PREFERENCE

The State of Montana applies a reciprocal preference against a Contractor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved.

For a list of states that grant resident preference, see

<http://gsd.mt.gov/ProcurementServices/preferences.mcpix>

1.22. REFERENCE TO CONTRACT

The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

1.23. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov/>

1.24. REJECTION OF BIDS

The Department reserves the right to reject any and all bids (wholly or in part) which fail to meet the terms, conditions and specifications of the bid package; or, are determined to be not in the Department's best interests; or, for which funding is not available. The Department reserves the right to reject bid proposals, waive technicalities, or advertise for new proposals. Bids will be firm for 30 days, unless stated otherwise in the text of this invitation for bid.

A written or verbal explanation regarding rejected bids may be obtained by contacting the Purchasing Services Section at (406) 657-0274 in Billings.

1.25. SEPARABILITY CLAUSE

A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

1.26. SHIPPING

Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

1.27. SOLICITATION DOCUMENT EXAMINATION

Contractors shall promptly notify the Department of any ambiguity, inconsistency or error, which they may discover upon examination of a solicitation document.

1.28. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

1.29. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603) Contact the State Procurement Section at (406) 444-2575 for more information concerning nonvisual.

1.30. TERMINATION OF CONTRACT

Unless otherwise stated, the Department may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the contract.

1.31. UNAVAILABILITY OF FUNDING

The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3))

1.32. UNIT PRICE

Unless otherwise specified, the unit price for each line item must be provided in the appropriate space within the bid document. This shall be known as the "base" bid. The unit price for multiple items must be extended to reflect the total price for the quantity of items requested. Unless otherwise specified, the unit price shall prevail.

1.33. U.S. FUNDS

All prices and payments must be in U.S. dollars.

1.34. VENUE

This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401)

1.35. WARRANTIES

The Contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

2.0. GENERAL REQUIREMENTS

2.1. BID/PROPOSAL SECURITY – SURETY BONDS ONLY

Each bid/proposal must be accompanied by bid proposal security based upon 10% of the total bid/offer. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than A-. The surety bond must be supplied on the form designated by the State of Montana. The required form may be found at: <http://gsd.mt.gov/ProcurementServices/procurementforms.mcpx> and entitled "Bid or Proposal Bond." THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE, ELECTRONIC OR PHOTOCOPIES ARE NOT ACCEPTABLE.

A bidder failing or refusing to enter into any awarded contract or purchase order within the required 10 working days following the Purchasing Services Section's issuance of request for documents notice shall forfeit the bid security. See Section 18-1-204(1), MCA. "Enter into any contract or purchase order" includes execution of the contract, submission of acceptable performance security and submission of any required liability insurance coverage and workers' compensation insurance coverage or exemption.

The bid security for the unsuccessful bids will be shredded, unless return is requested.

2.2. CONTRACT PERFORMANCE SECURITY – SURETY BONDS ONLY

The Contractor must provide contract performance security based upon 100% of the contract total. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than A-. The surety bond must be supplied on the form designated by the State of Montana. The required form may be found at: <http://gsd.mt.gov/ProcurementServices/procurementforms.mcpx> and entitled "Contract Performance Bond." THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE, ELECTRONIC OR PHOTOCOPIES ARE NOT ACCEPTABLE.

The contract performance security must be provided to the State of Montana within 10 working days from the Request for Documents Notice. This security must remain in effect for the entire term of the contract. A new surety bond must be issued to the State of Montana if this contract is renewed.

The original surety bond form must be provided to the following address: Purchasing Services Section, Attn: Richele Parkhurst, P.O. Box 20437, Billings, MT 59104-0437.

Ref: MCA Title 18, Chapter 4, Part 3; ARM, Title 2, Chapter 5, Sub-Chapter 5.

2.3. INSURANCE REQUIREMENT

- 2.3.1. General Requirements: The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with the performance of the work by the Contractor, agents, employees, assigns or subcontractors. The insurance shall cover such claims as may be caused by any negligent act or omission.
- 2.3.2. Primary Insurance: The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

- 2.3.3. Specific Requirements for Commercial General Liability: The Contractor shall purchase and maintain Occurrence coverage with combined single limits for bodily injury, personal injury and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.
- 2.3.4. Additional Insured Status: The Montana Department of Transportation, its officers, officials, employees and volunteers are to be covered as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied or used.
- 2.3.5. Specific Requirements for Automobile Liability: The Contractor shall purchase and maintain coverage with limits of \$500,000 per person (personal injury), \$1,000,000 per occurrence (personal injury), and \$100,000 per occurrence (property damage) OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.
- 2.3.6. Additional Insured Status: The Department, its officers, officials, employees and volunteers are to be covered as additional insureds for automobiles leased, hired or borrowed by the Contractor.
- 2.3.7. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department either: (1) The insured shall reduce or eliminate such deductibles or self-insured retention's as respect to Department, its officers, officials, employees and volunteers; or (2) The Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- 2.3.8. Certificate of Insurance/Endorsements: Insurance must be placed with an insurer with a Best's rating of no less than A-. The certificate must also include the Department's purchase order number or contract number. This insurance must be valid for the entire contract period. The Montana Department of Transportation, Purchasing Services Section, Attn: Richele Parkhurst, PO Box 20437, Billings, Montana 59104-0437 must receive all required certificates and endorsements within 10 days from the date of Request of Documents Notice before a contract or purchase order will be issued. Work may not commence until a contract or purchase order is in place. The Contractor must notify the Department immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

2.4. COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Contractor is required to supply the Purchasing Services Section with proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417) Neither the Contractor nor its employees are employees of the State. The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and must be received by the Purchasing Services Section, Attn: Richele Parkhurst, P.O. Box 20437, Billings, MT 59104-0437, within 10 working days of the Request for Documents Notice and must be kept current for the entire term of the contract.

CONTRACTS WILL NOT BE ISSUED TO CONTRACTORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

Coverage may be provided through a private carrier or through the State Compensation Insurance Fund (406) 444-6500. An exemption can be requested through the Department of Labor and Industry, Employment Relations Division (406) 444-1446. Corporate officers must provide documentation of their exempt status.

2.5. PREVAILING WAGE REQUIREMENTS

2.5.1. Montana Resident Preference

The nature of the work performed, or services provided, under this contract meets the statutory definition of a "public works contract" in section 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted in relation to these statutes.

Unless superseded by federal law, each contractor shall ensure that at least 50% of a contractor's workers performing labor on a construction project are bona fide Montana residents.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

2.5.2. Standard Prevailing Rate of Wages - Booklet Attached

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA.

Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

2.6. CONTRACTOR REGISTRATION – FOR CONSTRUCTION

The Contractor is required to be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution.

The State cannot execute a contract for construction to a Contractor who is not registered and may award the contract to the next responsive Contractor if registration is not completed in a timely manner. (Mont. Code Ann. § 39-9-401)

If you have a Contractor Registration Number, list it here: _____

2.7. CONTRACTOR WITHHOLDING – FOR CONSTRUCTION

Section 15-50-206, MCA requires the state agency or Department for whom a public construction work contract over \$5,000 is being performed, to withhold 1% of all payments and to transmit such monies to the Department of Revenue.

2.8. PROJECT SITE

Each Contractor should visit the job site to verify measurements and to become fully aware of the conditions relating to the project and the labor requirements. Failure to do so will not relieve the successful Contractor of his/her obligations to furnish all materials and labor necessary to carry out each provision of this contract.

Contractor shall adequately protect the project site, adjacent property and the public in all phases of the work. The Contractor shall be responsible for all damages or injury due to his/her action or neglect.

The Contractor shall allow the Department access to the Project.

2.9. CODE AND PERMIT REQUIREMENTS

Successful Contractor agrees that all work performed as a result of award of the project detailed herein shall meet or exceed all applicable city, county, state and federal codes. Failure to research said codes will not relieve the successful Contractor of his/her responsibility regarding code compliance. The Contractor shall be responsible for all required permits, licenses, fees and inspections associated with the project.

2.10. UNSATISFACTORY WORK

Work rejected by the Department as unsatisfactory shall be corrected by the Contractor prior to final inspection, acceptance and payment.

Contractor shall immediately proceed to remedy listed defects within 7 calendar days after Notice of Observed Defects has been issued by the Department.

Should the Contractor fail to respond to the Notice of Observed Defects or not remedy the defects, the Department reserves the right to have unsatisfactory work corrected at the expense of the Contractor.

Nothing herein stated shall obligate the Contractor to remedy defects caused by the Department's abuse of that work.

2.11. CLEAN-UP

The Contractor shall keep the premises free from debris and accumulation of waste

Remove all construction smears and stains from finished surfaces

Remove all surplus materials, tools and construction equipment before requesting final payment from the Department.

2.12. INDEPENDENT CONTRACTOR

Due to requirements of Federal labor laws, individuals who are presently a Montana State employee will not be considered for potential award of the Agreement. A successful bidder, who, during the post-bid period or during the term of the Agreement, becomes a Montana State employee, must immediately notify in writing the Chief of the Purchasing Services Section. Contractor agrees that, if it becomes a Montana State employee during those periods, or if it hires anyone to perform more than 50% of the work under the Agreement who is a Montana State employee, the Agreement is subject to immediate termination.

It is expressly agreed that the Contractor in fulfilling the terms of this Agreement is not an employee of the DEPARTMENT, but is solely an INDEPENDENT CONTRACTOR and not an employee of the DEPARTMENT.

2.13. REQUEST FOR DOCUMENTS/NOTICE TO PROCEED

After award has taken place, the successful Contractor will receive a "Request for Documents Notice" letter from the Purchasing Services Section. The "Request for Documents Notice" letter is not authorization to proceed with the project.

The purpose of the letter is to notify the Contractor that he/she must secure (a) proof of workman's compensation insurance coverage or exemption, (b) proof of liability insurance coverage and (c) contract performance security; and that these documents must be received by the Purchasing Services Section, Attn: Richele Parkhurst, 424 Morey Street in Billings before a "Notice to Proceed" with the project can be given.

Upon receipt by the Purchasing Services Section of the Contractor's proof of insurance and contract performance security, a purchase order will be officially signed. Receipt of the signed original purchase order by the Contractor shall be the Department's official "Notice to Proceed" with the project.

2.14. CIVIL RIGHTS

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, Contractor (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.

- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

3.0. AWARD PROCESS

- 3.1.1. Award will be made to one (1) Contractor whose valid bid meets all terms, conditions, specifications and dates as stated herein.
- 3.1.2. The prospective Contractor may take "exception" to bid terms, conditions, specifications and dates listed herein or, the prospective Contractor may submit an "alternate" proposal.
- 3.1.3. However, the Department reserves the right to disqualify any and all bids submitted which include either "exceptions" or "alternates." Additionally, the Department reserves the right to reject any and all bids if deemed to be in the Department's best interest.
- 3.1.4. The Department also reserves the right, due to reduced funding, due to failure of the successful contract to secure an approved air quality permit, or due to weather/seasonal consideration, to cancel all or any single or multiple project sites as referenced herein, if deemed in the Department's best interest.

4.0. SPECIAL PROVISIONS – GUARDRAIL

4.1. CONTRACT AUTHORITY

- 4.1.1. The Purchasing Services Section Supervisor will be the contract authority and the contract will be administered by a Maintenance Chief and/or District Administrator.
- 4.1.2. In the event of a discrepancy or grievance on the part of the Contractor or the Department, the affected party will make a written request for a hearing to the Purchasing Services Section Supervisor. This request must be made, in writing, no later than 30 days after the disagreement, questions or dispute has arisen. Upon receipt of the written request, a hearing date will be scheduled at the earliest possible convenience of all affected parties. A hearing committee will consist of the Contractor and Department representatives to include the Maintenance Division Administrator, Administration Division Administrator and the Chief Operations Officer(s). As this is not intended to be an adversarial meeting, but a problem-solving one, it is recommended that no party be represented by legal counsel at the hearing. Any resolution decided on as a result of this hearing will be binding for all parties involved. Contractor must notify the Purchasing Services Section Supervisor a minimum of 5 working days prior to the meeting if their legal counsel will be attending the meeting. If Contractor is to be represented by legal counsel and the Department's legal counsel is not available for the initially scheduled meeting, then the meeting will be rescheduled.

CONTRACT INFORMATION

PROJECT SITE: SALMON LAKE NORTH
ROUTE: MT-83
MILEPOST: BETWEEN 5.042 AND 7.936

SPECIFICATIONS FOR WORK:

Provide all labor, materials, equipment, traffic control and incidentals necessary to install W-Beam guardrail and 4 terminal end sections (which will be ET-Plus – Detailed Drawing Section 606-13A) and 2 W-Beam terminal end buffers (Detailed Drawing 606-88) located on MT-83 between milepost 5.042 and 5.491, milepost 5.581 and 5.770 and milepost 7.695 and 7,963. Wood posts will be required on all guardrail installed. The estimated length of guardrail will be approximately 6,000 feet. Contractor will complete all work on one installation prior to extending operation to the next installation, unless otherwise approved by Maintenance Chief.

All guardrail materials and installation shall be in accordance with the Department's book entitled "Standard Specifications for Road and Bridge Construction", 2006 edition or as amended by current supplemental specifications and current MDT Drawings.

CONTACT PERSON: JACK MAY

PHONE NUMBER: (406) 523-5803

**Are there any ADA requirements associated with this project? ☐ Yes ☒ No

**Traffic Control provided by Contractor? ☒ Yes ☐ No

**Contractor will remove and dispose of existing guardrail? ☐ Yes ☒ No

**Is this, or any part of this project on a reservation? ☐ Yes ☒ No

DESIGNATED CONTRACT DATE:

WORK IS REQUIRED TO BE COMPLETED ON OR BEFORE: OCTOBER 15, 2010

QUANTITY SHEET

Item & Description	Unit of Measure	Quantity	Unit Price	Total Price
Mobilization	Per L.S.	<u>1.0</u>	\$ _____	\$ <u>0.00</u>
Guardrail-W-Beam/Wood Post	LN FT.	<u>6,000.0</u>	\$ _____	\$ <u>0.00</u>
W-Beam End Sect Installed	Each	<u>2.0</u>	\$ _____	\$ <u>0.00</u>
Terminal End Sections	Each	<u>4.0</u>	\$ _____	\$ _____
Traffic Control	Per L.S.	<u>1.0</u>	\$ _____	\$ <u>0.00</u>
GRAND TOTAL				\$ <u><u>0.00</u></u>

Note: Contractors must extend and total their bid. All measurements are in English units.

